



Constitutional Validity of Triple talaq under Muslim personal law in Indian perspective

Dr. Nishat Jhan

Assistant Professor,

Department of Law, N.A.S (PG) College, Meerut

Organization NAS pg college

Ch. Charan Singh University Meerut U.P..25000.

Abstract

A Muslim man can divorce his wife merely by pronouncing talaq word thrice irrespective of his wife's physical. This practice has been criticised by Government, judiciary and many NGOs working for human rights. Shariat laws govern the Muslim personal laws in India. These laws can be said as a combination of Quran and teachings of Prophet Mohammad. It must be noted that there was no provision for Muslim women to seek divorce from her husband, therefore Dissolution of marriage act 1939 came in the force, thus replacing section 5 of shariat Act, 1937.

In this research paper the author writes about the Muslim personal laws relating to talaq and the present scenario of validity of triple talaq can be accessed from the most recent case Shayara Bano v. Union of India and others. In this case Supreme court held that the practice of triple talaq is invalid, unconstitutional because the constitutional validity of the sinful practice of triple talaq can be challenged on the grounds of Article 14, 15 and 21. Which led to criminalisation of triple talaq.

Key Words: Constitutional, validity, Triple talaq, Muslim women, personal, Law.

Introduction

DIVORCE UNDER MUSLIM LAW

Divorce, referred to as "Talaq" in Arabic, holds great importance in Islamic jurisprudence as a fundamental component of family law. The governance of this system is primarily based on the principles outlined in the Quran, with additional guidance from interpretations found in Hadith literature and legal rulings developed by Islamic scholars over the course of centuries. The divorce procedure in Muslim jurisprudence is structured to establish a structure for the termination of matrimony, taking into account the entitlements and obligations of both partners.¹

¹ Z. Hasan, & R. Menon, "Unequal citizens. A Study of Muslim Women in India", Oxford University Press, New Delhi, (2004).

Divorce is addressed in various chapters of the Quran, with Surah Al-Baqarah (2:229-230) and Surah At-Talaq (65:1-7) being the most prominent. These verses describe the protocols and prerequisites for commencing and concluding divorce. In general, divorce can be classified into two primary forms: Talaq, which is proclaimed by the husband, and Khula, which is initiated by the wife. According to Islamic jurisprudence, the practice of Talaq, which refers to unilateral divorce initiated by the husband, can be implemented in several manners, contingent upon the specific school of thought. The prevailing variant is referred to as "Talaq al-Sunnah," which adheres to the prophetic tradition and entails a period of waiting (iddah) where reconciliation is promoted. The husband issues a single pronouncement of Talaq, followed by a waiting period of three menstrual cycles (about three months) prior to the completion of the divorce. This interval allows the couple an opportunity to engage in reconciliation. The act of a spouse uttering Talaq three times inside a single sitting is commonly referred to as "Talaq al-Bid'ah" and is widely seen as strongly disapproved in numerous interpretations.² Conversely, Khula is instigated by the wife and usually entails the surrender of her financial entitlements in return for divorce. The implementation of this procedure may necessitate the involvement of a religious authority or legal entity in order to guarantee equity and compliance with Islamic tenets. In Islam, divorce is considered a permissible measure to address irreconcilable problems between spouses. However, it is emphasized that divorce should only be pursued as a final recourse after all attempts at reconciliation have been thoroughly explored and exhausted. In Islamic law, there is a significant focus on safeguarding the family structure and the welfare of children. Divorce is regarded as a decision that should be made after thorough deliberation and in accordance with proper procedures.³ Under Muslim law, there are two primary categories of Talaq, namely Talaq-ul-Sunnah and Talaq-ul-Bid'ah. The aforementioned terms pertain to distinct approaches to divorce as required in Islamic jurisprudence, each characterized by its unique set of processes and criteria. Talaq-ul-Sunnah is a form of divorce that adheres to the Sunnah established by the Prophet Muhammad. It is widely regarded as the most genuine and favored method of divorce within the Islamic faith. There are two primary versions of Talaq-ul-Sunnah. Talaq al-Hasan, commonly referred to as "the good divorce," is a divorce procedure wherein a husband pronounces Talaq once and subsequently observes the 'iddah (waiting period) until the divorce is officially concluded. During this interim phase, it is recommended to promote reconciliation, and if the couple successfully reconciles, the divorce is annulled. Talaq al-Ahsan, commonly known as "the best divorce," bears resemblance to Talaq al-Hasan, however with a lengthier delay and an additional declaration of Talaq. The husband issues a Talaq declaration on a single occasion, followed by a waiting period of three menstrual cycles, which typically spans roughly three months, prior to the completion of the divorce proceedings. In the event that reconciliation fails to transpire within this designated timeframe, the husband proceeds to utter Talaq once more, so rendering the divorce irreversible.⁴ The practice of Talaq-ul-Bid'ah, also referred to as "innovative divorce," is deemed unusual and disapproved of in Islamic jurisprudence. The practice entails the spouse uttering the word "Talaq" on three occasions within a single instance, frequently without considering the prescribed waiting period or

² Supra note 10 at 5.

³ S.S. Hameed, "Voice of the Voiceless: status of Muslim women in India", NCW (2000).

⁴ BC Sharma, "Can employment empower women more at the household level in India", The International Journal of Interdisciplinary, Social Sciences, 3(7), 43-51, (2008).

potential avenues for reconciliation. Talaq-ul-Bid'ah is regarded as a deviation from the Sunnah of the Prophet Muhammad and is subject to criticism due to its capricious character and susceptibility to abuse. Furthermore, apart from the aforementioned primary forms of Talaq, there exists the notion of Khula, which permits the wife to initiate divorce. The practice of Khula entails the wife's pursuit of divorce from her husband by the surrender of her pecuniary entitlements or the repayment of the mahr (dowry) acquired from her husband. The procedure of Khula may necessitate the involvement of a religious authority or legal entity in order to guarantee equity and compliance with Islamic tenets.

THE SCOPE OF THE SHARYA BANO CASE IN THE CONTEXT OF TRIPLE TALAQ

The case of "Shayara Bano" in 2017 constituted a significant legal dispute in India, focusing on the implementation of instant triple Talaq (Talaq-ul-Bid'ah) among Muslim communities. A petition was submitted by Shayara Bano, a Muslim woman hailing from Uttarakhand, to the Supreme Court of India, contesting the constitutionality of instant triple Talaq. This practice grants a husband the ability to promptly dissolve his marriage by uttering Talaq three times consecutively, often in a single instance, without adhering to the prescribed procedures outlined in Islamic literature.

Bano posited that the engagement in quick triple Talaq contravened her inherent entitlements as enshrined in the Indian Constitution, encompassing the rights to egalitarianism, absence of prejudice, and preservation of dignity. The argument put up was that the practice of quick triple Talaq exposed women to the risk of arbitrary and unilateral divorce, devoid of any prospects for reconciliation or legal remedies.

In August 2017, a panel of five judges from the Supreme Court of India presided over the case and issued a momentous ruling in support of Shayara Bano and other individuals filing the petition. The court rendered a verdict of unconstitutionality, arbitrariness, and violation of women's rights in relation to the practice of instant triple Talaq. The ruling determined that the act of instant triple Talaq did not constitute a fundamental component of Islamic jurisprudence, and as a result, it was not afforded protection under the constitutional right to religious freedom. The ruling rendered by the Supreme Court in the Shayara Bano case garnered significant acclaim as a triumph for gender equality and the advancement of women's rights within the Indian context. It was regarded as a notable advancement in eradicating the prejudiced practice of immediate triple Talaq and guaranteeing enhanced legal safeguards for Muslim women in divorce cases.

THE EFFECTS OF TRIPLE TALAQ ON MARRIED WOMEN IN ISLAM

The ordinance, despite being enacted with the aim of advancing the well-being of Muslim women as a whole, is afflicted by hurried writing that has diluted the intended positive impact it aimed to achieve. The expeditiousness demonstrated in the proclamation of the Ordinance raises inquiries regarding the presence of a genuine sense of urgency that prompted the Executive to circumvent the customary process of adopting legislation. It is important to mention that there is a lack of empirical evidence to support the claim that there was a widespread occurrence of Talaq (which has the effect of immediate divorce) and that such incidents had significantly increased. Talaq can be understood as a form of repudiation of a civil contract. The Ordinance presents a unique circumstance by not only making repudiation a criminal offense, but also by establishing a stringent culpability threshold. This is because the Ordinance does not require mens rea and solely considers mere proclamation as an offense.

The presence of gender inequity has far-reaching consequences for the broader community, impeding their ability to fully exercise the liberties protected by a contemporary Constitution. In an effort to challenge the constitutionality of these practices, the government has asserted that reforms in Muslim personal law have not been implemented for more than six decades. Consequently, Muslim women, who constitute approximately eight percent of the population, continue to experience significant vulnerability due to the apprehension of immediate divorce. In contrast to the prevailing perception derived from contemporary social media usage, it is important to acknowledge that patriarchy extends beyond a mere framework of male supremacy over women.

Although numerous Muslim women may desire and require internal changes within their communities, they experience unease when it comes to legal proceedings and harbor grounds to harbor skepticism towards the government. Instances of police misconduct against Muslims have been documented, with a higher incidence of imprisonment in comparison to other populations. Frequently, women seek local remedies prior to resorting to civil litigation. Within a low-income community, a collective of advocates collaborated with Islamic judges to assist women facing marital turmoil or domestic abuse in obtaining a divorce or asserting their financial entitlements following the dissolution of their marriage. According to activists, the establishment of supportive connections with these judges has been found to yield expedited, simplified, and more cost-effective resolutions of family problems compared to the alternative of resorting to civil courts. Moreover, oral divorce is widely regarded as the most convenient and prevalent approach to obtaining a divorce within the Muslim community. Among all women who were divorced, 65.9 percent were divorced through oral means. Lately, this phenomenon has been occurring through both text and email communication. Two women residing in Hyderabad were recently divorced through WhatsApp by their husbands.

MEASURES IMPLEMENTED BY THE INDIAN GOVERNMENT TO ALLEVIATE THE DISTRESS EXPERIENCED BY MUSLIM WOMEN

The government has implemented legislative measures aimed at safeguarding the rights of Muslim women and tackling concerns related to immediate triple talaq. The enactment of the “Muslim Women (Protection of Rights on Marriage) Act, 2019”⁵, represents a significant milestone in the legislative framework of India, specifically pertaining to the rights and safeguards granted to Muslim women. The Act was implemented to tackle the highly controversial matter of instant triple talaq. It clearly makes the practice illegal, making it unlawful for a Muslim husband to divorce his wife by saying "talaq" three times in a single session, whether spoken, written, or through electronic means. The aforementioned legislation not only functions as a preventive measure against capricious divorces, but also establishes a legal structure to protect the rights and welfare of Muslim women. The Act aims to establish accountability and deter the continuation of this unfair conduct by imposing severe penalties, such as imprisonment and fines, on violators. In addition, the legislation grants women who have been impacted the authority to pursue legal remedies and assistance, allowing them to approach Magistrate courts for restitution and relief, such as subsistence allowance and custody of underage children. By declaring any declaration of talaq that violates its provisions as null and unlawful, the legislation safeguards the inherent rights and dignity of Muslim women, providing them with the essential legal

⁵ Act No. 20 of 2019

safeguards to assert their rights and pursue justice in instances of marital dissolution. The legislation known as the “Muslim Women (Protection of Rights on Divorce) Act of 1986”⁶ As per this legislation, the husband is obligated to provide financial support to his wife during the period of iddat or for a duration of three months following the divorce. If the divorced woman lacks immediate family members to care for her or is unable to financially sustain herself, the magistrate has the authority to mandate the Waqf Board to assume the duty of providing assistance to the lady and her children. The aforementioned legislation transfers the obligation of financial support from the spouse to the relatives and the Waqf Board. The husband is aware that failing to offer financial support could result in his exerting control and harassing his divorced wife, compelling her to seek financial assistance from various sources. The husband assumes the role of caretaker for the children until they reach the age of two. Subsequently, the wife assumes the task of seeking financial support for them. The endeavors of an individual woman to legitimately seek financial support following a divorce were transformed into a significant political controversy, resulting in the marginalization of the woman's concerns, despite the presence of Quranic principles promoting gender equality. Subsequently, there has been a lack of endeavor from both

governmental bodies and the society to rekindle the agenda for gender-equitable reforms within the realm of Muslim personal law.⁷

Talaq is the Islamic term for divorce. A talaq is used to end a marriage under the terms of Islamic sharia. Its literal meaning is to release under muslim law. Talaq means repudiation of marriage by the husband in the exercise of his power which has been conferred on him.⁸

According to Ameer Ali- The prophet of islam is reported to have said with ALLAH , the most detestable of all things permitted is divorce.⁹

Munshere buzloo Rahim v. Laleefutoonisha¹⁰

In this case it was held that talaq is a mere arbitrary act of muslim husband who may repudiate his wife at his own pleasure with or without cause. He can pronounce talaq at any time without obtaining the prior approval of his wife for the dissolution of marriage.

The most heated topic at present in India is the issue of triple Talaq in Islam, wherein the Hon'ble Supreme Court of India is rendering its precious and valuable time to curb out this so called social evil of Triple Talaq in order to protect the rights of Indian Muslim Women from this social evil. Here it is necessary to point out here that the main source of Islamic Law is the Holy Book of Quran and it is a strong belief of every Muslim that it contains nothing which can be termed as a social evil as it is a book not written by a human being but a revelation from God (Allah) for the benefit of entire mankind. Muslims believe that the Quran was verbally revealed by God to Muhammad through the angel Gabriel. Therefore, it becomes necessary to bring out what the holy book Quran says about Talaq .

⁶ Act no 25 of 1986

⁷ Kimberley Crenshaw “Mapping the Margins: Intersectionality, Identity politics and violence against women of colour” 43Stanford Law Review 1299 (1991).

⁸ Wajid Ali khan v. Jafar Husain A.I.R 1932 oudh p34.

⁹ Mahamman law p.472

¹⁰ (1861)

Talaq/divorce is considered to be a sin which is unforgivable in the eyes and based on the Quran it is very much clear that Allah discourages divorce and encourages the continuation of marriage. However, if it becomes impossible to resolve disputes between the husband and wife then the Holy Quran itself provides for the procedure to be followed for the dissolution of marriage in an amicable manner .

There are two major forms of Talaq:-

Talaq-ul-Sunnat;-

This form of Talaq is based on the Prophet's tradition (Sunna) and as such is considered as the most approved form of Talaq. The best method of Talaq, is Talaq-ul-sunnat. It is also called revocable Talaq for the reason that Talaq does not become final at once and there always remains a possibility of compromise between the husband and wife. Only this kind of Talaq was in practice during the life of the Prophet. This mode of Talaq is recognized both by Sunnis as well as by the Shia's.

2 Capacity for talaq:

Under shia law In order to pronounce a valid talaq every muslim husband must be sound mind ,and attained the age of puberty is competent to pronounce Talaq.Talaq must be in the presence of at least two witnesses orally,unless the husband is unable to speak.

Under sunnni law a Muslim husband of sound mind who has attained majority may divorce his wife whenever he likes by pronouncing Talaq even without assigning any cause.¹¹

3.Classification of talaq;

Divorce may be discussed under the following classification:

1.By the husband:

- (i) Talaq repudiation of marriage.
- (ii) Illa.
- (iii)Zihar.

2. By the wife--

- (i) Talaq -e tafwid. (Delegated divorce)
- (ii) Khula.
- (iii)Lian ,

3. Common consent---

- (i) Mubarat,
- (ii) Khula,

4.Faskh(Judicial process)

By the husband.

(I)Talaq:

There are two major forms of Talaq-

- 1. Talaq- ul- Sunnat
- 2. Talaq- ul –Biddat

¹¹ Hadaya p.75 session Judge, Medak v. NajjuBibi 1970 Andh 138

1. Talaq -ul- Sunnat.

This form of Talaq is based on the Prophet's tradition (Sunna) and as such is considered as the most approved form of Talaq. The best method of Talaq, is Talaq-ul-sunnat. It is also called revocable Talaq for the reason that Talaq does not become final at once and there always remains a possibility of compromise between the husband and wife. Only this kind of Talaq was in practice during the life of the Prophet. This mode of Talaq is recognized both by Sunnis as well as by the Shia's. Talaq-ul-Sunnat may be pronounced either in Ahsan or in the Hasan form:-

(i) Talaq-Ahsan- This is the most proper form of Talaq. The reason is twofold: First, there is the possibility of revoking the pronouncement before expiry of the Iddat period. Secondly, the evil words of Talaq are to be uttered only once.

Being an evil, it is preferred that these words are not repeated. In the Ahsan Talaq there is a single declaration during the period of purity followed by no revocation by husband for three successive periods of purity.

After this single pronouncement, the wife is to observe an Iddat of three monthly courses. If she is pregnant at the time of pronouncement the Iddat is, till the delivery of the child. During the period of Iddat there should be no revocation of Talaq by the husband. Revocation may be expressed or implied. Cohabitation with the wife is an implied revocation Talaq. When the period of Iddat expires and the husband does not revoke the Talaq either expressly or through consummation, the Talaq becomes Irrevocable and final.

(ii) Talaq Hasan (Proper):

This Talaq is also regarded to be the proper and approved form of Talaq. In this form too, there is a provision for revocation. But it is not the best mode because evil words of Talaq are to be pronounced three times in the successive Tuhrs.

(a) The husband has to make a single declaration of Talaq in a period of 'Tuhr.

(b) In the next Tuhr, there is another single pronouncement for the second time.

It is significant to note that the first and second pronouncements may be revoked by the husband. If he does so, either expressly or by resuming conjugal relations, the words of Talaq become ineffective as if no Talaq was made at all.

(c) But, if no revocation is made after the first or second declaration then lastly the husband is to make the third pronouncement in the third period of purity (Tuhr). As soon as this third declaration is made, the Talaq becomes irrevocable and the marriage dissolves and the wife has to observe the required Iddat

2. Talaq-ul-Bidaat or triple Talaq (Irrevocable):

Talaq is also known as Talaq-ul-Bain. It is a disapproved mode of divorce. A peculiar feature of this Talaq is that it becomes effective as soon as the words are pronounced and there is no possibility of reconciliation between the parties. The Prophet never approved a Talaq in which there was no opportunity for reconciliation. Under the Shia Law, an irrevocable Talaq is not recognised. The husband may make three pronouncements in a period of purity (Tuhr) saying: "I divorce thee, I divorce thee, and I divorce thee". He may declare his triple Talaq even in one sentence saying: "I divorce thee thrice", or "I pronounce my first, second and third Talaq. Professor Tahir Mahmood has summarised the Quranic procedure of divorce the law of Islam Says to the

husband - Talaq is "worst of all permitted things better avoid it; but if find necessary to have recourse, to talaq then."¹² When Talaq is in writing it becomes irrevocable immediately⁶

In Shamim Ara, v. State of U.P.¹³

The Court formulated a new standard for *ṭalāq*: "The correct law of *ṭalāq* as ordained by the Holy Quran is that *ṭalāq* must be for a reasonable cause and be preceded by attempts at reconciliation." between the husband and the wife by two arbiters, one from the wife's family and the other from the husband; if the attempt fails Talaq may be affected.

In the case of Shayra Bano v. UOI and other¹⁴

The practice of triple talaq is violative of the fundamental rights guaranteed to citizens in India under Article 14, 15 and 21 of the constitution. so triple talaq is unconstitutional and void.

This commendable judgement of this case gave birth

The Muslim Women (protection of right on Marriage) Act, 2019.

This act makes all declaration of talaq, including in written or electronic form, to be void and illegal and declaration of Talaq is a cognizable offence, attracting up to three years imprisonment with fine.

(ii) Ila:

Besides talaq, a Muslim husband can repudiate his marriage by two other modes, that are, Ila and Zihar. They are called constructive divorce. In Ila, the husband takes an oath not to have sexual intercourse with his wife. Followed by this oath, there is no consummation for a period of four months. After the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, Ila is cancelled and the marriage does not dissolve. If there is no cohabitation, even after expiry of four months, the wife may file a suit for restitution of conjugal rights against the husband.

(iii) Zihar:

In this mode the husband compares his wife with a woman within his prohibited relationship e.g., mother or sister etc. The husband would say that from today the wife is like his mother or sister. After such a comparison the husband does not cohabit with his wife for a period of four months. Upon the expiry of the said period Zihar is complete.

3. Divorce by mutual consent:

Khula and Mubarat: They are two forms of divorce by mutual consent. The word khula, in its original sense means "to draw" or "dig up" or "to take off".

In law it is said to signify an agreement between the spouses for dissolving a connubial union in lieu of compensation paid by the wife to her husband out of her property. Although consideration for Khula is essential, the actual release of the dower or delivery of property constituting the consideration is not a condition precedent for the validity of the khula. Once the husband gives his consent, it results in an irrevocable divorce. The husband has no power of cancelling the 'khul' on the ground that the consideration has not been paid.

¹² Tahir Mahmood; The muslim of India p.115 (1980) Central law Agency Allahabad.

¹³ AIR 2002 SC 520.

¹⁴ A.I.R 2018 W.R,118.

(ii) In mubarat, the outstanding feature is that both the parties desire divorce. Thus, the proposal may emanate from either side. In mubarat both, the husband and the wife, are happy to get rid of each other. Among the Sunnis when the parties to marriage enter into a mubarat all mutual rights and obligations come to an end.

4 .Divorce by wife:

The divorce by wife can be categorized under three categories:

- (i) Talaq-i-tafweez
- (ii) Lian: falls charges upon wife by husband.
- (iii) By Dissolution of Muslim Marriages Act, 1939

(i) Talaq-i-tafweez or delegated divorce is recognized among both the Shias and the Sunnis. The Muslim husband is free to delegate his power of pronouncing divorce to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently. The power of talaq may be delegated to his wife.

(ii)Lian:If the husband false charges of unchastity or adultery against his wife, the wife is entitled to get a decree of divorce.

Dissolution of Muslim marriage act, 1939 section 2 of the act.

A woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds, namely-

(1) Absence of husband:

If the husband is missing for a period of four years the wife may file a petition for the dissolution of her marriage. Section 3 provides that where a wife files a petition for divorce under this ground, she is required to give the names and addresses of all such persons who would have been the legal heirs of the husband upon his death. The court issues notices to all such persons appear before it and to state if they have any knowledge about the missing husband. If nobody knows then the court passes a decree to this effect which becomes effective only after the expiry of six months.

2. failure to maintain:

If the husband has neglected or has failed to provide for her maintenance for a period of two years, it is a legal obligation of every husband to maintain his wife, and if he fails to do so, a married muslim women can obtain a decree for the dissolution of marriage on this ground.

3. Imprisonment of husband:

If the husband has been sentenced to imprisonment for a period of seven years or upward the wife is entitled to obtain a decree of divorce.

4. Failure to perform marital obligation:

If the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years, the wife can get a decree of dissolution of marriage.

5. Impotency of husband:

If the husband was impotent at the time of the marriage and continues to be so: for getting a decree of divorce on this ground, the wife has to prove that the husband was impotent at the time of the marriage and continues to be impotent till the filing of the suit. Before passing a decree of divorce on this ground, the court is bound to give to the husband one year to improve his potency provided he makes an application for it. In Gul Mohd.

Khan v. Hasina the wife filed a suit for dissolution of marriage on the ground of impotency. The husband made an application before the court seeking an order for proving his potency. The court allowed him to prove his potency.

6. virulent venereal disease:

the husband's insanity must be for two or more years immediately preceding the presentation of the suit. Leprosy may be white or black or cause the skin to wither away. It may be curable or incurable. Venereal disease is a disease of the sex organs. The Act provides that this disease must be of incurable nature. It may be of any duration.

7. Repudiation of marriage by wife:

If she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated;

8. cruelty of husband:

If the husband treats her with cruelty, that is to say-

- (a) Habitually assaults her or makes her life miserable by cruelty or by bad conduct
- (b) Associates with women of ill-repute or leads an infamous life, or
- (c) Attempts to force her to lead an immoral life, or
- (d) Disposes of her property or prevents her exercising her legal rights over it, or
- (e) Obstructs her in the observance of her religious profession or practice, or
- (f) If he has more than one wife, does not treat her equitably in accordance with the injunctions of the Holy Quran.

In K. Muhamma Latif v. Nishath A.I.R 2004 Ker 22

Kerala High court had to consider whether the second marriage of the husband amounts to cruelty and therefore a ground for divorce to the first wife.

why do we need to ban triple talaq?

Conclusion:

The constitutional validity of triple talaq (talaq-e-biddat) in India was a subject of intense debate, culminating in the landmark case *Shayara Bano v. Union of India* (2017), where the Supreme Court declared it unconstitutional. The Court ruled that triple talaq violated fundamental rights, particularly Article 14 (right to equality) and Article 21 (right to life and dignity), as it allowed arbitrary and unilateral divorce without giving women a fair opportunity. The judgment emphasized that personal laws must align with constitutional principles, ensuring justice and gender equality. Following this, the *Muslim Women (Protection of Rights on Marriage) Act, 2019* was enacted, criminalizing instant triple talaq and reinforcing the protection of Muslim women's rights. This development reflects India's commitment to upholding constitutional morality over religious practices that infringe upon individual rights, marking a significant step toward gender justice in the country.

References

1. Tahir Mahmood; The muslim of India p.115 (1980) Central law Agency Allahabad.
2. Shariat Act,1937.
3. Dissolution of Muslim marriage act, 1939
4. Muslim Women (Protection of Rights on Divorce) Act of 1986
5. The Muslim Women (protection of right on Marriage) Act 2019.
6. www.Legalservicesindia.com
7. www.wikipedia.org
8. <http://www.researchgate.net>
9. <http://www.manupatra.com>
10. <http://www.ijser.org>